IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.5673 OF 2001

Dattu Damu Wadhane)
At Kahu, Post Vetale)
Tal.: Rajgurunagar)
Dist.: Pune.).. Petitioner

Versus

1) The Conservator of Forest)
Pune Vrutt, Pune, Swargate)
P.M.T. Building, Shankarshet Road)
Pune 411 037.)

2) The Deputy Conservator of Forest)
Junnar Forest Department)
Mahsul Bhavan, Junnar, Dist.: Pune.).. Respondents

Mr.U.B. Nighot for the Petitioner.

Mr.A.P. Vanarse, Assistant Government Pleader,
for the Respondents.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 17TH OCTOBER 2005

ORAL JUDGMENT :

. This Petition challenges the judgment and order dated 13th September 2001 passed by the Industrial Court, Pune in Complaint (ULP) No.154 of 1998 dismissing the Complaint. The Complaint filed by the Petitioner was under Items 5, 6, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act").

2. The Petitioner joined the services as a forest worker since July 1995. He was required to do all the work that permanent employees were doing in the Forest Department. However, despite completion of 240 days in service, the Respondents did not make the Petitioner permanent in employment. The Petitioner was not paid wages which were payable to the permanent employees. The Petitioner therefore filed Complaint (ULP) No.577 of 1998 under Items 5, 6, 9 and 10 of Schedule IV of the Act before the Industrial Court, Pune on 3rd April 1998. Written Statement was filed by the Respondents on 20th October 1999. The main contention raised in the Written Statement was that, although the Petitioner had completed 240 days in service, it was not possible to make him permanent since he was working on a scheme introduced by the Government. Minimum wages were also being paid to the workman and, therefore, there was no question of payment of any further amount. It was also pleaded that there were no vacant sanctioned posts and, therefore, the Petitioner could not be absorbed as a permanent employee. It was pleaded that the benefits of the permanent employees could not be extended to the Petitioner in view of the Government Resolution dated 31st January 1996. The Petitioner examined himself before the Industrial Court and deposed that he had completed 240 days in service. He also placed on record

a chart showing his record ever since he joined service on 13th July 1995 which established that he had worked more than 240 days in each year except for the year 1995. After recording evidence, the Industrial Court has dismissed the Complaint principally on three grounds. The Industrial Court found that interpretation of Item 6 of Schedule IV of the Act does not lead to the conclusion that every time an employee completes 240 days in service, he will necessarily be entitled to permanency. The Industrial Court has further held that there must be cogent evidence on record to show that the employer had continued the workman for years together as a temporary employee deliberately and with a view to deprive him of the status and privileges available to a permanent employee. The Industrial Court by relying on various judgments of the Supreme Court has held that regularisation of an employee is not a concomitant of his having worked for 240 days continuously in the service. The Industrial Court has further observed that payment of wages which were less than those payable to permanent employees, is not an unfair labour practice since the workman was admittedly employed as a temporary worker and, therefore, there was no question of extending benefits available to permanent employees to him.

3. The main submission of the learned Advocate for

the Petitioner is that the Industrial Court has dismissed the Complaint despite the judgment in the case of *Chief Conservator of Forests* vs. *Jagannath Maruti Kondhare*, **JT 1995 (9) SC 465**. Furthermore, this Court in the case of *Divisional Manager, Division Wanprakalpa Office (West), Forest Development Corporation of Maharashtra Ltd., Nashik* vs. *Chimna Arjun Jadhav*, **2001 (4) Mh.L.J. 97**, has held in a similar situation where the Complaints have been filed by various employees that they were entitled to be made permanent.

4. Mr.Vanarse for the Respondents submits that it is true that the workman has completed 240 days in service. However, there are no sanctioned posts as the budgetary allowance do not permit of the appointment of the Petitioner as a permanent employee.

5. Undisputedly, the Petitioner has worked for 157 days in the year 1995; 312 days in 1996; 307 days in 1997 and 74 days in 1998 till the Complaint was filed. The Supreme Court in the case of Kondhare (supra), has held that once a workman has put in 240 days continuously, he is entitled to be made permanent. In that case, before the Supreme Court a similar contention was raised by the Respondents that there were insufficient funds and that there were no sanctioned posts. Both these submissions were discussed by the

Apex Court by observing thus :

> "28. In so far as the financial strain on State exchequer is concerned, which submission is sought to be buttressed by Shri Dholakia by stating that in the Forest Department itself the casual employees are about 1.4 lacs and if all of them were to be regularised and paid at the rate applicable to permanent workmen, the financial involvement would be in the neighborhood Rs.300 crores a very high figure indeed. We have not felt inclined to bear in mind this contention of Shri Dholakia as the same has been brought out almost from the hat. The argument relating to financial burden is one of the despair or in terrorem. We have neither been impressed by the first nor frightened by the second in as much as we do not intend that the view to be taken by us in these appeals should apply, proprio vigore, to all casual labourers of the Forests Department or any other Department of the Government.
>
> 29. We wish to say further that if Shri Bhandare's submission is taken to its logical end, the justification for paying even minimum wages could wither away, leaving any employer, not to speak of model employer like the State - exploit unemployed persons. To be fair to Shri Bhandare it may, however, be stated that the learned counsel did not extend his submission this far, but we find it difficult to limit the submission of Shri Bhandare to payment of, say fair wages, as distinguished from minimum wages. We have said so, because if a pay scale has been provided for permanent workmen that has been done by the State Government keeping in view its legal obligations and must be one which had been recommended by the State Pay Commission and accepted by the Government. We cannot deny this relief of permanency to the respondent-workmen only because in that case they would be required to be paid wages meant for permanent workers. This right flows automatically from the relief of regularisation to which no objection can reasonably be taken, as already pointed out. We would, however, observe that the relief make available to the respondents is not one which would be available ipso facto to all the casual employees either of the Forests

> Department or any other Department of the State. Claim of casual employees for permanency or for higher pay shall have to be decided on the merits of their own cases.

Therefore, the Industrial Court is in error in dismissing the Complaint filed by the Petitioner. There is an unfair labour practice committed on the part of the Respondents under Items 6 and 9 of Schedule IV of the Act.

6. In the case of *Chimna Arjun Jadhav* (supra), the learned Single Judge of this Court, after considering *Kondhare's* case (supra) and a similar contention raised by the Respondents that the work of the office of Comptroller of Accounts was not perennial in nature has observed thus :

> "... The fact that the respondents complainants have been continued for over 15/20 years by the petitioner corporation itself presupposes that the schemes are perennial and introduced on permanent basis. The Apex Court in the said decision has also observed that the environment pollution care work, whose need is on increase because of increase in pollution, permanency is thus writ large on the face of such types of work. It is relevant to note that it was seriously argued on behalf of the State Government before the Apex Court that the financial implications of absorbing all the workmen would be to the extent of Rs.300 crores, but the said argument did not find favour with the Court, as is evidence from the observations made in para 28 thereof. Instead, the Apex Court observed that, the argument relating to financial burden is one of despair or in terrorem and that the Court was neither

> impressed by the first nor frightened by the second. The Court further clarified that the benefit of the said decision shall be extended to all the casual labourers of forest department or any other department of the Government. After this judgment of the Apex Court, it is too late in the day for the petitioner corporation to contend that the respondents-complainants are not entitled for the reliefs of regularisation and permanency, even though they have continuously worked for more than 240 days in a year for the last 15/20 years. The inescapable conclusion is that the provisions of the Act of 1971 cannot be frustrated by taking pendantic approach suggested by the petitioner."

7. In my view, therefore, the inescapable conclusion is that the Industrial Court has erred in dismissing the Complaint. The Respondents have committed unfair labour practice under Items 6 and 9 of Schedule IV of the Act. The question now is whether the Petitioner would be entitled to permanency from the date of joining or from the date when he first completed 240 days in service or from the date of filing of the Complaint. Although the workman has completed 240 days in 1996, he chose to approach the Industrial Court only in the year 1998 and, therefore, in my view, he is entitled to permanency with effect from the date on which the Complaint was filed i.e. on 3rd April 1998.

8. Rule made absolute accordingly. No order as to costs.